

(2012) 02 PAT CK 0032

In the Patna High Court

Case No : Criminal Appeal (DB) No. 402 of 1989

Ela Singh @ Akhil Kumar Singh and Sone Lal Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) 02 PAT CK 0032

Hon'ble Judges : Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench : Division Bench

Judgement

Honourable Mr. Justice Amaresh Kumar Lal

1. Ela Singh @ Akhil Kumar Singh and Sone Lal Singh have preferred this appeal against the judgment of conviction and order of sentence dated 5.8.1989 passed by the learned 2nd Additional Sessions Judge, Saharsa in Sessions Trial No. 66 of 1982 by which they have been convicted and sentenced to rigorous imprisonment for life u/s 302/34 IPC and rigorous imprisonment for five years u/s 201/34 I.P.C. Both the sentences have been directed to run concurrently.

2. According to Fard Beyan (Ext. 4), the prosecution case, in brief, is that on 26.9.1980 at about 5-6 p.m. the informant Chandra Shekhar Singh (P.W. 6) sent his son Ghanshyam Singh (deceased) to tend his cattle towards Bandh. P.W. 6 went to the Bandh and asked his son to go home. When P. W. 6 reached to his house at 6 p.m. he did not find his son Ghanshyam Singh (deceased) and thereafter he started searching him. His brother Sri Krishna Singh (P.W. 1) also went to Rauta and Saharsa to search him but they did not find and as such Sri Krishna Singh (P.W. 1) went to the police station for giving information. The search was going on. It is further alleged that on 27.9.1980 at about 3.30 P.M. one Muso Chamar (P.W. 5) raised hulla in the village that dead body of Ghanshyam Singh was lying in the east of village by the side of kachchi road no. 14 near the brick kiln in the water. Thereafter, informant along with villagers Om

Prakash Singh, Jeevan Prasad Singh, Lalit Prasad Singh (none of them examined) and others went to the place of the occurrence and saw that his son Ghanshyam Singh (deceased) was lying dead there. Blood was oozing from his mouth and face was crushed. There was scratch on the dead body. They brought the dead body to the road. It is further stated that somebody killed the boy and thrown him in the water. The informant has suspected that both the appellants Ela Singh @ Akhil Kumar Singh and Sone Lal Singh have killed the boy and have thrown the dead body due to previous litigation with respect to the land with Akhil Kumar Singh and he had also threatened to take away the lives. Appellant Sone Lal Singh had also assaulted the informant (P.W. 6) prior to the occurrence due to grazing by cattle and he used to threaten the informant and both the appellants are of one group. The fard beyan of the informant was recorded on 27.9.1980 at 4 p.m.

3. On the basis of fard beyan Sonbarsa P. S. Case No. 13 of 1980 was instituted against unknown. After investigation charge-sheet was submitted against both the appellants for the offence punishable under Sections 302 and 201 I.P.C. Cognizance was taken, the case was committed to the Court of sessions and charges were framed against both the appellants for the offence punishable under Sections 302/34 and 201/34 I.P.C. The appellants pleaded not guilty thereafter, they were tried. Both the appellants have been convicted and sentenced as aforesaid.

4. Let us examine as to whether the prosecution has been able to substantiate its case beyond all reasonable doubts.

5. The prosecution has examined following witnesses to prove its case:- P. W. 1 Shri Krishna Pd. Singh, P. W. 2 Awadh Singh, P. W. 3 Chandra Kishore Singh, P. W. 4 Bhagal Mushar, P. W. 5 Muso Ram, P. W. 6 Chandra Shekhar Singh, P. W. 7 Bhagwat Mushar, P. W. 8 Ramjee Mushar, P. W. 9 Subodh Narain Singh, P. W. 10 Parmeshwar Choudhary, P. W. 11 Md. Muslim, P. W. 12 Dr M.K. Rana, P. W. 13 Tripurari Pd. Singh, and P. W. 14 Bomshankar Mishra. D. W. 1 Dev Narain Singh and D. W. 2 Ram Bilash Singh have been examined on behalf of the defence who have proved the affidavit of Bhagawat (Ext. A) and affidavit of Ramjee Mushar (P.W. 8) Ext. A/1 respectively. The Investigating Officer has not been examined.

6. The defence of the appellants is that they have been falsely implicated in this case due to enmity.

7. P. W. 13 has been tendered and P. W. 14 is formal witness who has proved the FIR (Ext. 4) and Case-Diary (Ext. 5).

8. P. W. 6 is the informant and the father of the deceased. He has stated that on the date of occurrence he went to Mubariya Bad where his cattle were grazing. He asked his son (deceased) to go to the house and he would take the cattle later on. P. W. 6 returned to his house with his cattle but he did not find his son there. He searched his son and also asked his brother Sri Krishna Pd. Singh (P.W. 1) to search his son. Sri Krishna Pd. Singh went to Routa and Saharsa but the

boy could not be found. Later on, Muso Chamar (P.W. 5) told P.W. 6 that the dead body was lying near the brick kiln in the water. P. W. 6 went there and identified the dead body of his son Ghanshyam Singh, blood was oozing from the nose and there were also some scratches. This witness has suspicion that both the appellants Ela Singh and Sone Lal Singh have committed the murder of his son. There has been litigation with them and prior to the occurrence the appellant Sone Lal Singh had assaulted him and had also threatened him. He has identified his signature (Ext. 1) on the Fard beyan. In paragraph 19 he has stated that when he was returning after the search of his son, both the accused met him in the way. From his evidence it appears that P.W. 6 has not seen the occurrence rather only enmity has been shown between the prosecution party and the appellants and the information regarding the dead body was given by Muso Chamar (P. w. 5).

9. P. W. 5 Muso Ram has stated that he saw the dead body of Ganshyam Singh (deceased). He has not stated that he saw the dead body lying in the field. He has been declared hostile. In his cross-examination, he has stated that the people of village were divided in two groups; in one group Chandrashekhar Singh and Surendra Singh and the other group consists of accused and others.

10. P. W. 1 has stated that on 26.9.1980 when he returned from the school at about 5.30 p.m. to his house, at 6 p.m. his brother (P. W. 6) Chandrashekhar Prasad Singh came to the house with cattle and Ghanshyam Singh (Deceased) was searched by his (P.w. 1) mother. For search P. W. 1 went to Routa and Saharsa at the house of his relatives. On next day 27.9.1980 he went to sonbarsa Police Station where he gave the identification of his nephew (deceased) thereafter he saw the dead body of the deceased. He also came to know that both the appellants were absconding from the village. He has also stated about the litigation between the prosecution and the accused. From the cross-examination also it is apparent that there has been litigation between both the parties.

11. P. W. 2, P.W. 3, P. W. 7 and P. W. 8 have not supported the prosecution case and they have been declared hostile.

12. P. W. 4 is a hearsay witness. He has stated that he was returning to his house and when he came to the Darwaja of Ela Singh (appellant), he heard Ramjee Mushar (P.W. 8) telling his master Bindeshwari Babu that Ela Singh and Sone Lal Singh, who are appellants here, have throttled the neck of Ghanshyam Singh (deceased) and sank him in the water. On the next day Ram Jee told him (P. W. 4) that he would not do the job of Bindeshwari as they (appellants) have killed Ghanshyam Singh (deceased) and they may implicate him in this case. P. W. 4 is a hearsay witness and his source of information is Ramjee Musahar (P.W. 5). P. W. 5 has not supported the prosecution case at all and he had been declared hostile. Thus, the evidence of P. W. 4 is of no use.

13. P. W. 9 is the witness to the inquest and he has proved the signature Ext. 1/1

on the inquest report dated 27.9.1980.

14. P. W. 10 and P. W. 11 are the judicial Magistrates who have recorded the statement of witnesses u/s 164 Cr. P.C. P. W. 10 has recorded the statement of Bhagawat Musahar (P.W. 7) u/s 164 Cr. P. C. which has been marked as Ext. 2. In his cross- examination he has stated that he cannot say as to who had produced Bhagawat Musahar before him. P. W. 11 has recorded the statement of Ramjee Rishideo (P.W. 8) u/s 164 Cr.P.C. which has been marked as Ext 2/1. He has also taken the statement of Mangal Rishideo (not examined) u/s 164 Cr.P.C. and proved as Ext. 2/2.

15. P. W. 12 Dr. M. K. Rana has performed the post-mortem examination on the dead body of Ghanshyam Singh Hindu Male aged about 13 years on 28.9.1980 at 11.30 hours. He found that rigor mortis was present in the lower limb. Decomposition had set in the more detailed description of post-mortem. The following changes were noticed on the body of the deceased:-

On post mortem examination the decomposition had set in its evident from presence of gaseous bistras under the skin scattered over the body with redish coloured fluid, cuticles of upper portion of front of chest, buttock, back and shoulders were denuded. Bruises and abrasions not recognizable. Hence done dessection of neck. No underlined changes (ante- mortem) like extravasation nor blood clots were marked. The eyes were forced out of their kets, with cornia white and milky with flattening. The tongue protruded between the teeth. Lips were swollen and everted. Darkish bloody fluid oozed out from mouth on compression of chest. Nostrils oozed blood stains towards angle of mouth. On opening thorasic cavity, the lungs were found congested and contused. The right chamber of the heart contained small quantity of dark redish blood. The left chamber was empty and pale. The mucusa of trachea redish and congested. The abdomen was disfended which on opening the gas escaped with loud noise. The stomach and the intestine showed patch red discolouration scattered over their walls due to decomposition. The liver looked flabby and congested. The spleen became soft, bulky, and greenish steel in colour due to decomposition. The kidneys were congested. On openings the skull, the scalp was found soft and loose. The hairs of the head paled easily. The surfaces of the skull were loose. The brain matter inside the maninges were soft and pulpy and in semi- fluid state and revealed no abnormality. The feature of the face were bloated and distorted. The salural tissues were inflated through out. So, the body appeared stauter and older than actually it was. The penis and scrotums were abnormally swollen due to decomposition.

The post-mortem report has been marked as Ext. 3. In his cross-examination he has stated that Asphyxia may be caused by drowning. In case of strangulation ligature mark is also caused. However, such marks could not be detected due to decomposition.

16. After considering the prosecution evidence it appears that there is no

material on the record to show that the appellants have committed the offence. The prosecution has not been able to substantiate its charge against the appellants beyond reasonable doubt.

17. Considering the facts and circumstances, in our opinion, the impugned judgment of conviction and sentence is not fit to be sustained. It is set aside. The appellants are acquitted of the charges and they are ordered to be discharged from the liability of their bail bonds.

18. In the result, this appeal is allowed.